IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMMY MARVIN HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42695

FILED

JAN 10 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY D. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of trafficking in a controlled substance and, pursuant to a guilty plea, of two counts of possession of a firearm by an ex-felon. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

Appellant Sammy Harris argues that the district court erred in (1) finding during the trial that the doctor-patient privilege did not apply to statements he made to an emergency room physician after his arrest; (2) admitting custodial statements in violation of his Fifth Amendment right against self-incrimination; (3) denying his motion to act pro se; and (4) prior to accepting his guilty plea, denying his motion to dismiss the counts in the information charging him with possession of a firearm by an ex-felon. We disagree.

The doctor-patient privilege

Generally, a patient[1] has the right to refuse to disclose, and to prevent others from disclosing, confidential communications made between himself and his doctor.[2] The doctor-patient privilege, however,

[1]A patient is "a person who consults or is examined or interviewed by a doctor for purposes of diagnosis or treatment." NRS 49.215(3).

[2]NRS 49.225.

is waived if the patient "voluntarily discloses or consents to disclosure of any significant part" of the confidential communication.[3] Accordingly, information intended to be transmitted to a third party is not "confidential."[4] Harris knew that Dr. Harrington conducted his examination at the request of the police officers, who are third parties. Regardless, Harris refused to provide any information to Dr. Harrington, including his medical history. Therefore, there was no communication that would be subject to a claim of privilege.

Fifth Amendment right against self-incrimination

The Fifth Amendment of the United States Constitution grants individuals the right against self-incrimination and requires police officers to advise suspects of their Miranda rights prior to conducting a custodial interrogation.[5] Consequently, statements made during a custodial interrogation are admissible only if the defendant knowingly and voluntarily waives his Miranda rights. "Where the accused has been fully and fairly apprised of his Miranda rights, there is no requirement that the warnings be repeated each time the questioning is commenced."[6] In determining whether an individual's Miranda rights were violated, this

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[3]NRS 49.385(1). This section does not apply if the disclosure itself is "a privileged communication" or "[m]ade to an interpreter." NRS 49.385(2).

[4]NRS 49.215(1); NRS 49.385(1).

[5]Miranda v. Arizona, 384 U.S. 436, 479 (1966); Koger v. State, 117 Nev. 138, 141, 17 P.3d 428, 430 (2001).

[6]Taylor v State, 96 Nev. 385, 386, 609 P.2d 1238, 1239 (1980).

court will "review the facts and circumstances of each particular case weighing the totality of circumstances."[7]

Here, the record indicates that Harris was fully and fairly advised of his Miranda rights before he made the incriminating statements to the officers. After receiving the Miranda warning, Harris did not stop the officers' interview or invoke his right by requesting an attorney. Within thirty minutes of receiving his rights, Harris freely conversed with the officers and admitted to trafficking the drugs and possessing the firearms. Further, the record contains no evidence that the officers' original Miranda warnings became diluted or stale, even though Harris contends that his subsequent unconsciousness negated the enforceability of these warnings. Conversely, Dr. Harrington's evaluation and Harris's own admissions raise serious doubts to as to whether Harris was ever unconscious. Weighing the totality of the circumstances, the officers properly administered Harris's Miranda rights. In light of these facts, we conclude that the district court appropriately admitted Harris's statements since he knowingly and voluntarily waived his Miranda rights prior to making admissions to the officers.

Motions to act pro se

The Sixth Amendment of the United States Constitution and Article 1, Section 8 of the Nevada Constitution afford a criminal defendant the right to self-representation.[8] A criminal defendant's "'ability to represent himself has no bearing upon his competence to choose self-

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[7]Koger, 117 Nev. at 141, 17 P.3d at 430.

[8]U.S. Const. amend. VI; Nev. Const. art. 1, § 8, cl. 1; see Faretta v. California, 422 U.S. 806, 818-19 (1975).

representation."'[9] If he knowingly and voluntarily waives counsel and chooses self-representation with an understanding of its dangers, including the difficulties presented by a complex case, the court must honor his request.[10] To do otherwise is a reversible error, unless the defendant's request is untimely, equivocal, or made solely for the purposes of delay or he abuses his right by disrupting the judicial process.[11]

The district court articulated several grounds for denying Harris's motion to represent himself. In particular, the court found that Harris had waived his right to self-representation because his request was untimely and would delay the proceedings. To avoid untimeliness or delay, a criminal defendant must make the request for self-representation "early enough to allow the defendant to prepare for trial without need for a continuance."[12] Here, Harris moved the court three days prior to trial to act pro se. Upon receiving this request, the court thoroughly informed Harris of the "dangers and disadvantages of self-representation."[13] During this Faretta canvass, Harris freely admitted that he was not ready for trial and requested a continuance. Therefore, we conclude the district court appropriately denied Harris's motion to act pro se since the act of requesting a continuance made the motion untimely.

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[9]Vanisi v. State, 117 Nev. 330, 341, 22 P.3d 1164, 1172 (2001) (quoting Godinez v. Moran, 509 U.S. 389, 400 (1993)).

[10]Id. at 341-42, 22 P.3d at 1172.

[11]Id. at 338, 22 P.3d at 1170.

[12]Lyons v. State, 106 Nev. 438, 446, 796 P.2d 210, 214 (1990).

[13]Gallego v. State, 117 Nev. 348, 356, 23 P.3d 227, 233 (2001).

Motion to dismiss counts in information

Where a guilty plea serves as the basis for a conviction, prior errors, if any, are "superseded by the plea of guilty."[14] In Webb v. State, this court explained that

> "a guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."[15]

As such, a defendant who pleads guilty may challenge only the "voluntariness of the plea itself and the effectiveness of counsel."[16]

Since the denial of Harris's motion to dismiss occurred prior to the entry of his guilty plea, Harris is prohibited from raising this claim on direct appeal. In light of the above, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Maupin

_____, J.
Gibbons

_____, J.
Hardesty

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[14]Hall v. Warden, 83 Nev. 446, 453, 434 P.2d 425, 429-30 (1967).

[15]91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)).

[16]Kirksey v. State, 112 Nev. 980, 999, 923 P.2d 1102, 1114 (1996).

cc: Hon. Sally L. Loehrer, District Judge
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